Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 585.

THE BOARD OF COMMISSIONERS OF STANLY COUNTY and I. W. SNUGGS, Treasurer of Stanly County, Petitioners,

vs.

W. N. COLER & COMPANY.

Brief for Respondents in Opposition to Granting Writ.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
Of Counsel.

Recital in These Negotiable Bonds.

The bonds in suit are negotiable (see Record, p. 7, for copy of bond). They are dated July 1, 1890, and were issued in that year. They recite as follows (Record, p. 7):

"*This bond* is one of a series of eighty of the denomination of one thousand dollars each, and forty of the denomination of five hundred, making a total of

one hundred thousand dollars, *issued by authority* of an act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled, 'An Act to amend the Charter of the Yadkin Railroad Company,' *and of Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*, and authorized by a majority vote of the qualified voters of Stanly County, at an election regularly held for that purpose on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County."

It will be observed that they recite not only the act of March 3, 1887, *but specifically Sections 1996 to 1999, inclusive, of the Code*, and that the bonds are authorized by a majority vote of the qualified voters of Stanly County, voting at an election held the 15th of August, 1889. These bonds were issued to pay for a subscription to the stock of the Yadkin Railroad Company, mentioned in the bonds, to aid in the construction of the railroad of that company.

Enabling Act.

The following are Sections 1996–2000 of the Code of North Carolina of 1883 :

"SEC. 1996. The boards of commissioners of the several counties shall have power to subscribe stock to any railroad company or companies when necessary to aid in the completion of any railroad in which the citizens of the county may have an interest.

SEC. 1997. The board of commissioners of any county proposing to take stock in any railroad company shall meet and agree upon the amount to be subscribed, and, if a majority of the board shall vote for the proposition, this shall be entered upon the record, which shall show the amount proposed to be subscribed, to what company, and whether in bonds, money or other property, and thereupon the board shall order an election, to be held on a notice of not less than thirty days, for the purpose of voting for or against the proposition to subscribe the amount of stock agreed on by the board

of county commissioners. And, if a majority of the qualified voters of the county shall vote in favor of the proposition, the board of county commissioners, through their chairman, shall have power to subscribe the amount of stock proposed by them and submitted to the people, subject to all the rules, regulations and restrictions of other stockholders in such company or companies. Provided, that the counties, in the manner aforesaid, shall subscribe from time to time such amounts, either in bonds or money, as they may think proper.

SEC. 1998. All elections ordered under the preceding section shall be held by the sheriff under the laws and regulations provided for the election of members of the General Assembly. The votes shall be compared by *the board of county commissioners*, who shall make a record of the same.

SEC. 1999. In case the *county* shall subscribe the amount proposed in bonds, *the board of commissioners shall have power* to fix the rate of interest, not to exceed the rate of eight per cent., when the interest on said bonds shall be payable, and at what place, and shall also fix the time and places of paying the interest, and shall also determine the mode and manner of the same; and also to raise by taxation, from year to year, the amount necessary to meet the interest on said bonds.

SEC. 2000. The taxes authorized by the three preceding sections to be raised for the payment of interest or principal shall be collected by the *sheriff in like manner as other State taxes*, and be paid into the hands of the county treasurer, to be used by the chairman of the board of county commissioners as directed by this chapter."

It is admitted by all parties and all courts that these sections of the Code are constitutionally valid, and authorize the issue of bonds on the conditions therein prescribed.

The recital above quoted, in the bonds in question, that they are "*issued by authority of* * * * *Sections 1996, 1997, 1998 and 1999 of the Code of North Carolina*," &c., is conclusive in favor of *bona fide* holders of these bonds, that *all the conditions existed*

which were prescribed by these sections of the Code as precedent to the issuance of bonds.

That the words "*issued by authority of* Sections 1996, 1997," etc., in favor of *bona fide* purchasers for value, import full compliance with these sections of the Code, see opinion of Mr. Justice HARLAN in *Evansville vs. Dennett*, 161 U. S., 434, 442, where he quotes from *School District vs. Stone*, 106 U. S., 183, 187, the well-settled doctrine on that proposition. Same quotation, page 5 of our brief, herewith printed and bound. See also *Waite vs. Santa Cruz*, 184 U. S., 302, to same effect.

That it is immaterial that the bonds also recited the invalid act of 1887, see case exactly in point, *Evansville vs. Dennett*, 161 U. S., 434 p. 2, *et seq.*, of our brief, herewith printed and bound; and *Anderson County vs. Beal*, 113 U. S., 227, cited p. 12 of our said brief.

The order of the Board of County Commissioners of Stanly County, under which the subscription was made and the election held and the bonds issued, is set out in full in the record (pp. 19, 20). This order is important, in view of the ground on which the application for the *certiorari* is now made—namely, the ground that the County of Stanly, or the citizens of the county, had no interest in the railroad in question. The order of the Board of Commissioners recites, *inter alia*, as follows (Record, p. 19): "**It appearing that the citizens of said county have an interest in said railroad, it is hereby resolved and ordered," etc.** It ordered an election to be held, as recited in the bond, in accordance with Section 1998 of the Code. The order was carefully considered, and conserved the interests of the county,

because it provided that if a majority of the voters voted to subscribe for the stock of the said railroad the bonds of Stanly County should be delivered as follows: "$25,000 when ten miles is constructed and in operation, from the Rowan County line *into the County of Stanly;* $25,000 when the road is constructed from Salisbury, in said county, into Albemarle; and the remaining $50,000 when the road is constructed from Salisbury into Norwood, in Stanly County," etc. It is admitted on the record, and it is undisputed, that the railroad was completed and put in operation as contemplated in the order and vote of the people of the county. The subscription was accordingly made and the bonds of Stanly County issued, sold in the market and held by *bona fide* holders.

The county levied taxes and paid the interest on these bonds for more than four years.

At the time when these bonds were issued and sold there was no decision of the Supreme Court of North Carolina, or of any of the Courts of the State, that would invalidate the Act of March 3, 1887, referred to in the bonds as one of the sources of power for their issuance, or construing Sections 1996–1999 of the Code as not furnishing authority for the issuance of these or similar bonds. On the contrary, there were many decisions of the Courts of North Carolina in line with the decisions in other States and with the decisions of the Supreme Court of the United States in regard to the issuance of county and municipal bonds.

In 1897, years after these bonds had been issued and sold, the Supreme Court of North Carolina, in what is called the "Stanly suit"—to wit, the case of *Commissioners of Stanly County vs. Snuggs*, 121 N. C., 394, which was a simulated and collusive case, being

brought by the Commissioners of Stanly County against the Treasurer of the County of Stanly, and making no bondholder a party, and in which no bondholder was represented or heard, made a decision on which the petitioners in this case for a writ of *certiorari* rely, the said petitioners being the said Board of County Commissioners of Stanly County, and the said Snuggs being the Treasurer thereof, they being, as above stated, the very parties and the only parties to the suit in the Supreme Court of the State of North Carolina. In other words, these two petitioners, who are now here on the same side of this case, both claiming that these bonds are invalid—that is, the Board of Commissioners of the County of Stanly and the Treasurer of the County of Stanly—were the very parties, and the only parties, to the Stanly case in the Supreme Court of North Carolina. They were really not adversary parties in that suit in the Supreme Court of North Carolina, but were really both on the same side of the case. The suit was thus really only between different officers of the same body corporate, and there was really but one party before the Court—namely, the County of Stanly; and that was the decision which the petitioners in this case now contend conclusively determined the rights of the holders of these bonds, issued years before that case was decided. The bare statement of the proposition shows its audacious and preposterous character. When that decision is considered, as it is in the opinions of Judges MORRIS and BOYD, Judges of the United States Circuit Court of Appeals, it is inconceivable that the learned Judges of the Supreme Court of North Carolina would, or ever could, have made such a decision, if the parties in interest

had been present or represented—to wit, the bondholders.

The question presented on this application for a writ of *certiorari* is very short—Is the decision of the Circuit Court of Appeals right? If it is, it ought to end the controversy, and without reference to the decision in the collusive and simulated case of *Stanly County vs. Snuggs*, to which we have referred, and which is the sole basis for the present application for a writ of *certiorari*.

We have not deemed it necessary, on this application for a writ of *certiorari*, to do more than to refer to the able opinions of Judges MORRIS and BOYD in the United States Circuit Court of Appeals, printed in the record in this case (pp. 81 to 102, inclusive), and to reprint as a part of this brief the brief which we filed in the United States Circuit Court of Appeals on behalf of the appellees on the petition for a rehearing, which petition was granted, as shown in the record. It is shown in the above-mentioned opinions of MORRIS and BOYD, JJ., and in our said brief that the decision of the United States Circuit Court of Appeals in favor of the validity of these bonds is clearly correct.

There was lawful statute authority, properly enacted by the Legislature, authorizing the issue of bonds by counties, namely, Sections 1996 to 1999 of the Code. The bonds were issued by the County of Stanly, reciting that they were issued "by authority of * * * Section 1996, 1997, 1998 and 1999 of the Code of North Carolina," and "authorized by a majority vote of the qualified voters of Stanly County," etc. This recital is conclusive in favor of the *bona fide* holder of these negotiable bonds that all the facts existed which, by the said Sections 1996 to 1999 of the Code, were prerequi-

site to the issue of the bonds, and the County of Stanly is estopped to deny such facts.

But, furthermore, the order above referred to, entered by the Board of Commissioners of the county, and all the proceedings for the issuance of these bonds show that, as a matter of fact, the conditions existed which, under said Sections 1996 to 1999 of the Code, were necessary in order that bonds might be issued under the authority of the said sections. The said order of the Board of County Commissioners recites, what was true in fact, that the citizens of the county had an interest in the said railroad, and there is not a particle of evidence, proof, or finding of any kind, in the record to show the contrary ; but the county is, by the recitals in the bonds, estopped to show the contrary.

Inasmuch as the construction of the words in the sections of the Code referred to as to the "interest" of the citizens of the county, and the "completion" required by those sections, is fully discussed in the opinions of Judges MORRIS and BOYD and in our brief on the rehearing, made a part of this present brief, and in the brief of our associate counsel, Mr. PRICE, we do not enlarge upon it in this place.

As the time for the preparation of briefs is short, we and our associate counsel, Mr. PRICE, have prepared separate briefs, so as to have the matter presented to the Court at the present term.

As the decision of the United States Circuit Court of Appeals is clearly correct, the petition for writ of *certiorari* should be denied.

JOHN F. DILLON,
HARRY HUBBARD,
JOHN M. DILLON,
Of Counsel for Respondents.